IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

WEDNESDAY, THE 26TH SEPTEMBER 2007 / 4TH ASWINA 1929

Bail Appl..No. 5688 of 2007()

CRIME NO.286/2007 OF VADAKKANCHERRY POLICE STATION

: PETITIONERS/ACCUSED NO.1 TO 6

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1. VIJAYAN, AGED 36, S/O. KOTHA,
KANNANGATH VALAPPIL, KODUMBU DESOM,
KANJIRAKODE VILLAGE, VADAKKANCHERRY, THRISSUR.

2. AJAYAN, AGED 24 YEARS, S/O. RAMAN,
KANNANGATH VALAPPIL, KODUMBU DESOM,
KANJIRAKODE VILLAGE, VADAKKANCHERRY, THRISSUR.

3. CHANDRAN, AGED 26, S/O. AYYAPPAN,
KANNANGATH VALAPPIL, KODUMBU DESOM,
KANJIRAKODE VILLAGE, VADAKKANCHERRY,THRISSUR.

4. BALAN, AGED 26, S/O. CHAMI,
CHALIATTIL, KODUMBU DESOM,
KANJIRAKODE VILLAGE, VADAKKANCHERRY,THRISSUR.

5. MANIKANDAN, AGED 32, S/O. AYYAPPAN,
AAVISSERI VALAPPIL, KODUMBU DESOM,
KANJIRAKODE VILLAGE, VADAKKANCHERRY,THRISSUR.

6. ANANDAN, AGED 26, S/O. KUNJUNNI,
KOLAVARAMBATH, KODUMBU DESOM,
KANJIRAKODE VILLAGE, VADAKKANCHERRY,THRISSUR.

BY ADV. SRI.C.P.UDAYABHANU
SRI.M.ANIL KUMAR
SMT.PREETHI K.PURUSHOTHAMAN
SMT.C.SUCHITHRA

RESPONDENTS: COMPLAINANT

STATE OF KERALA, REPRESENTED BY
THE S.I. OF POLICE, VADAKKANCHERRY POLICE STATION,
(CRIME NO.286/07), REPRESENTED BY THE
PUBLIC PROSECUTOR, HIGH COURT OF KERALA,
ERNAKULAM.

BY PUBLIC PROSECUTOR SRI.S.U.NAZAR

THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION ON 26/09/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R.BASANT, J

B.A.No.5688 of 2007

Dated this the 26th day of September, 2007

ORDER

Application for anticipatory bail. The petitioners are accused 1to 6. They face allegations for offences punishable, inter alia, under Sections 324 and 308 I.P r/w 149 I.P.C. They allegedly belong to the B.J.P. The victims belong to the C.P.M. Political animosity is the alleged motive. Dangerous weapons like wooden sticks, iron rods etc. were allegedly used for the commission of offence. There are 4 injured persons. Apprehending arrest in the course of investigation, the petitioners have come to this Court for anticipatory bail.

2. The learned counsel for the petitioners submits that the allegations are totally false. Exaggerated and fanciful allegations are being raised. The inclusion of the offence under Section 308 I.P.C is not justified at all and reveal only the prejudice of the Investigating Officer in favour of the C.P.M, who are now exercising political power. The petitioners may, in these circumstances, be granted anticipatory bail, submits the learned counsel for the petitioners.

3. The learned Public Prosecutor opposes the application. The learned Public Prosecutor submits that the investigation is now complete. Final report has already been filed. It is for the petitioners

now to appear before the learned Magistrate and seek regular bail in the committal proceedings.

4. The learned counsel for the petitioners submits that in view of the fact that an allegation under Section 308 I.P.C has been unjustly included in the final report, the petitioners are not likely to get regular bail from the learned Magistrate. That, the learned counsel for the petitioners submits, is the precise motive in including the allegation under Section 308 I.P.C.

5. In the nature of the contention, the learned Public Prosecutor was requested to apprise this Court of the nature of the injuries. The nature of the injuries suffered has been read over to me from the wound certificates. I do, in these circumstances, find merit in the contention of the learned counsel for the petitioners that the inclusion of the allegation under Section 308 I.P.C deserves closer and careful scrutiny.

6. After the decision in **Bharat Chaudhary v. State of Bihar** [A.I.R 2003 S.C 4662], it is well settled that powers under Section 438 Cr.P.C can be invoked where apprehended arrest is in execution of processes issued by a Court after taking cognizance. I am satisfied, in the facts and circumstances of this case that this is an eminently fit case where direction under Section 438 Cr.P.C can be issued in favour of the petitioners.

7. In the result, the Bail Application is, allowed. The following directions are issued under Section 438 Cr.P.C.

i) The petitioners shall appear before the learned Magistrate at 11 a.m on 03.10.07. They shall be enlarged on regular bail on their executing a bond for Rs.50,000/- (Rupees Fifty thousand only) each with two solvent sureties each for the like sum to the satisfaction of the learned Magistrate;

ii) The petitioners shall make themselves available for interrogation before the Investigating Officer as and when directed by the Investigating Officer in writing to do so;

iii) If the petitioners do not appear before the learned Magistrate as directed in clause (i), directions issued above shall thereafter stand revoked and the police shall be at liberty to arrest the petitioners and deal with them in accordance with law as if those directions were not issued at all;

iv) If the petitioners were arrested prior to their surrender on 03.10.07 as directed in clause (1) above, they shall be released from custody on their executing a bond for Rs.50,000/- (Rupees Fifty thousand only) without any sureties undertaking to appear before the learned Magistrate on 03.10.07.

(R.BASANT, JUDGE)

rtr/-